

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NATIONAL AIR DUCT CLEANERS
ASSOCIATION,

Plaintiff,

v

DUSTIN MEYERS,

Defendant.

Case No. 1:10-cv-798

HON. JANET T. NEFF

OPINION AND ORDER

On December 6, 2012, the Magistrate Judge issued a Report and Recommendation in this case, recommending that this Court grant Plaintiff's Motion for Default Judgment. Pending now before the Court is Plaintiff's "Objection to Report and Recommendation to Correct Facts and Limit Default Judgment to Injunctive Relief Only" (Dkt 87). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objection has been made. The Court grants the objection, and issues this Opinion and Order.

Plaintiff states that when submitting its motion for entry of default judgment (the "Motion") against Defendant Dustin Meyers ("Meyers") (Dkts 78, 79), Plaintiff incorrectly recited the facts of the case with regard to the status of Meyers' bankruptcy proceedings. "While Plaintiff's Motion correctly stated that Meyers' bankruptcy case was dismissed, it mistakenly fails to inform the court that Meyers filed a second bankruptcy action. Plaintiff obtained a lift of the automatic stay in this second bankruptcy proceeding for the purpose of obtaining injunctive relief in the present action"

(Obj., Dkt 87 at 2). Plaintiff then filed a Motion to Reopen the present action against Meyers (Dkt 74), which was granted (Dkt 76). Based on the relief from stay granted to it in the second bankruptcy proceeding, Plaintiff should have requested only injunctive relief in its Motion. Plaintiff thus objects to the Report and Recommendation for the sole purposes of correcting the facts and requesting that the Default Judgment be limited to awarding Plaintiff injunctive relief against Meyers.

On the facts presented, the Court grants Plaintiff's Objection and rejects that portion of the R & R based on the incorrect facts as set forth herein. The Default Judgment will be limited to awarding Plaintiff injunctive relief against Meyers. Accordingly, the corrected proposed Default Judgment presented with Plaintiff's Objection (Dkt 87-1) will be entered.

Therefore:

IT IS HEREBY ORDERED that the Objection (Dkt 87) is GRANTED, and the Report and Recommendation (Dkt 86) is APPROVED and ADOPTED as the Opinion of the Court except as stated herein.

IT IS FURTHER ORDERED that the Motion for Default Judgment (Dkt 78) is GRANTED IN PART and DENIED IN PART; the corrected proposed Default Judgment attached to Plaintiff's Objection (Dkt 87-1) shall enter.

Dated: February 8, 2013

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge